



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/133,801	08/13/98	JOHNSON	J 10172-9013-I

IM62/0216
KANE, DALSIMER, SULLIVAN, KURUCZ,
LEVY, EISELE AND RICHARD, LLP
711 THIRD AVE
NEWYORK NY 10017

EXAMINER

GRAY, L

ART UNIT	PAPER NUMBER
1734	8

DATE MAILED:

02/16/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/133,801

Applicant(s)

Johnson

Examiner

Gray, Linda L.

Group Art Unit

1734

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8-13-98
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 25-29 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 25-29 is/are rejected.
- ☒ Claim(s) 25 is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. for formal drawings filed 8-13-98
- ☒ The proposed drawing correction, filed on 8-13-98 is ☒ approved ☐ disapproved.
- ☒ The drawing(s) filed on 8-13-98 is/are objected to by the Examiner. (formal)
- ☐ The specification is objected to by the Examiner.
- ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

DETAILED ACTION

Oath/Declaration

1. The declaration is defective. A new declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required, MPEP §602.01 and §602.02. The declaration is defective because the filing dates of 60/036,186 and 60/035,051 are incorrect.

Drawings

2. The drawings are objected to because of the following: **One**, the following signs point to the incorrect location: **(a)** 360 at the top, 430 above 1267, 1090 (Fig 1), **(b)** 420 (Fig 2), **(c)** 900, 960 (Fig 12), **(d)** 2004 (Fig 18), **(e)** 2152 (Fig 20A), **(f)** 2116 (Fig 25), **(g)** 2038 (Fig 27), **(h)** 2038, 2044, 2047 (Fig 28), **(i)** 2047 (Fig 30), **(j)** 410 (Fig 32), and **(k)** 12,1 4 (Fig 45). **Two**, sign 2146 points to a first location in Figure 34, a second location in Figure 35, and a third location in Figures 36-38. **Three**, sign 2043, Figure 18, should be 2041. **Four**, sign D, Figure 48, along the bottom should be D'.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference signs not mentioned in the description: **(a)** 21 (Fig 1), **(b)** 755 (Fig 10, 11), **(c)** 990 (Fig 14), **(d)** 1015 (Fig 15), **(e)** V' (Fig 17), **(f)** w'', **(g)** w'' (Fig 19), **(h)** 16 (Fig 19) [note: sign 16 in the description is for end 16 in Fig 44], **(i)** 211 (Fig 20A), **(j)** 2057 (Fig 20A), **(k)** 2061 (Fig 32), **(l)** 2160 (Fig 35, 37), **(m)** 3090 (Fig 39A), **(n)** 5006 (Fig 43), **(o)** 2 denoting a cross section (Fig 44) [note: sign 2 in the description is for an end 2 in Fig 44-45], **(p)** 155 (Fig 48), **(q)** 158' (Fig 48-49), **(r)** 180 (Fig 56), **(s)** 400 (Fig 56) [note: sign 400 in the description is for a control device in Fig 1], **(t)** 243 (Fig 56), and **(u)** 3' (Fig 57).

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description: **(a)** 12 [note: when used to define a seal and not phantom lines 12 in Fig 54], **(b)** 32 [note: when used to define a web and not a cylinder in Fig 46], **(c)** 70 [note: when used to define a dotted line and not an aperture in Fig 54], **(d)** 105, **(e)** 150 [note: when used to define nip rollers and not tape 150 as in Fig 56], **(f)** 160, a motor and 160, a punch device, **(g)** 170, **(h)** 180 [note: 180 in Fig 56 is not air], **(i)** 200 [note: when used to define a cut and not a loop side as in Fig 4 or an apparatus as in Fig 56], **(j)** 245, **(k)** 310, **(l)** 520 [note: when used to define a dancer and not an arm as in Figure 2], **(m)** 600, **(n)** 710, **(o)** 775, **(p)** 832, **(q)** 1000, **(r)** 1005, **(s)** 1070, **(t)** 1140, **(u)** 1160, **(v)** 1202, **(w)** 1220, **(x)** 2056', **(y)** 2063, **(z)** 2065, **(aa)** 2113-17, **(bb)** 2129A, **(cc)** 2148, **(dd)** 2155, **(ee)** 2183, **(ff)** 2210 [note: when used to define a barrier and not a first extruded base tape as in Fig 41], **(gg)** 2567, **(hh)** 5005, and **(ii)** 72 [note: when used to define a bilaminate and not an aperture as in Figure 54 or an upper grip as in Fig 57].

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because of the

following: (a) 2 designate "an end" and "a cross section" (Fig 44), (b) 12 designates "a seal" and "phantom lines", (c) 32 designate "a web" and "a cylinder", (d) 70 designates "an aperture" and "a dotted line", (e) 72 designates "an aperture", "a bilaminate", and "an upper grip part", (f) 74 designates "a end" and "an arrow", (g) 76 designates "storage volume" and "an end", (h) 80 designates "temporary storage" and "a seal", (I) 150 designates "nip rollers" and "a tape", (j) 160 designates "a motor" and "a punch device", (k) 180 designates "air" and "an item in Figure 56" not yet defined, (l) 200 designates "a cut", "a loop side", and "an apparatus", (m) 202 designates "a second step" (Fig 3) and "a web", (n) 520 designates "a dancer" and "an arm", (o) 2045 designates "an arrow" and "an end", (p) 2056 designates "a vacuum" and "a seal", (q) 2058 designates "a seal" and "a top end", (r) 2059 designates "a seal bar" and "a bottom end", (s) 2162 designates "a seal bed" and "a seal", and (t) 2210 designates "a first extruded base tape" and "a barrier".

6. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed.

Specification

7. **The disclosure is objected to because of the following:** (a) 110 should be 100 (p 15, L 9; 17, L 2), (b) 1A should be 1 (p 15, L 21), (c) 100 (second) should be 110 (p 17, L 6), (d) 1070 should be 1110 (p 23, L 5), (e) delete 1265 (p 23, L 18), (f) 2004 is incorrect (p 25, L 13), (g) 2018 should be 2014 (p 28, L 9), (h) the drawings are not colored photographs (p 28, L 11), (I) 403 is incorrect (p 30, L 5), (j) 2047 should be 2179 (p 30, L 19), (k) 2130 is incorrect (p 31, L 10), (l) 2130G is incorrect (p 31, L 14 and 21), (m) 2130B is incorrect (p 31, L 22), (n) 2109 should be 2109A (p 32, L 1), (o) 2056 (first) should be 2056' (p 32, L 23), (p) 2154 is incorrect (P 34, L 23), (q) 1140 2200 is incorrect (p 36, L 3), (r) 2210 should be 2206 (p 36, L 16 and 18), (s) 2210 should be deleted (p 36, L 19), (t) 2056 should be 2032, 2154 (p 37, L 17), (u) 1140 should be 2138 (p 37, L 20 and 22), (v) insert "2058," before 2060 (p 39, L 5), (w) 2043 should be 2041 (p 27, L 6), (x) 100A in the disclosure should be 270, (y) 114 in the disclosure should be 280, and (z) 2000 should be 2200 (p 36, L 2). Correction is required.

8. The use of the trademark DELRIN (p 32, L 8) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the trademarks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks. Also, see TEFLON (p 32, L 11).

9. Applicant is reminded of the proper language and format for an abstract of the disclosure:

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure

concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

10. The abstract of the disclosure is objected to because of the following: (a) "The present invention includes" (L 1), (b) "of the present invention" (L 15), MPEP §608.01(b). Correction is required. Also, it is suggested that 2001 (L 3) and 220 (L 14) be deleted since the abstract does not contain any other numbers for the other significant portions of the apparatus

Claim Objections

11. Claim 25 is objected to because of the following: (a) "and a flexible interlocking fastener assembly" after "portion" should be deleted and (b) "back wall" should be changed to "rear wall" since "rear wall" is recited in the preamble of claim 25. Correction is required.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claim 25-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 25, use of "simultaneously sealing . . . to said back wall" renders claim 25 indefinite because it is not clear what items are being simultaneously sealed together: the front wall to the back wall, the front wall to the lip, the lip to the back wall, or the front wall to the back wall as well as the lip. Indicating that the lip is sealed is unclear also because the lip has already been sealed to one of the walls in a prior step where this wall could be the front wall. **Claim 25**, use of "said wall" (last line) renders claim 25 indefinite because it is not clear what wall is being reference, i.e., the front or rear wall. **Claim 27** is indefinite because it is unclear if the continuous elongated sheet is the same as the material in claim 25 to which the lip is recited as being sealed to. **Claim 28**, use of "said step of sealing" renders claim 28 indefinite because it is unclear which sealing step such refers to since claim 1 has three sealing steps.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 25 and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Kanemitsu et al. (US 5,400,568).

Claim 25, Kanemitsu et al. teach a method of manufacturing reclosable bag 4 having top and bottom ends, opposing front and rear walls, and a flexible interlocking fastener assembly including items 2B and 3B. The method includes **(a)** sealing the assembly to lips 2C and 3C by coextruding portions the layers that make up items 2B and 3B with lips 2C and 3C, respectively, **(b)** sealing lips 2C and 3C to front wall 5 and back wall 5, and **(c)** simultaneously sealing end 6 of the front wall to end 6 of the back wall using presses 35 and 36. Items 2B and 3B are engaging portions releasably connected to each other. With respect to the limitation of bag 4 being fail-safe and reduces the risk of release of contents within or from an interior storage volume of bag 4 by inadvertent separation of one portion of the front wall from another portion of the wall, if the front wall is separated from the back wall at the top of bag 4, bag 4 is still considered fail-safe and still considered to reduce the risk of release of contents within or from an interior storage volume of bag 4 by inadvertent separation because if the bag is upright, the contents will still not leave bag 4 from the assembly along the side of bag 4. **Claim 28**, steps a, b, and c are heat sealing steps. **Claim 29**, although an intended use limitation, Kanemitsu et al. teach inserting products in bag 4 (c 1, L 9-17; c 6, L 10-64; c 9, L 23, to c 13, L 38).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. (US 5,776,045) in view of Kanemitsu et al.

Claim 25, Bodolay et al. teach a method of manufacturing a reclosable bag having top and bottom ends, opposing front and rear walls, and flexible interlocking fastener assembly 57 including **(a)** sealing assembly 57 to web 14 which forms the front and rear walls of the bag and **(b)** simultaneously sealing an end of the front wall to the back wall. Assembly 57 has (c 3, L 12, to c 7, L 15).

The difference between claim 25 and Bodolay et al. is that Bodolay et al. do not teach sealing assembly 57 to lips which are sealed to web 14 to hold assembly 57 on web 14.

Kanemitsu et al. teach that the use of lips 2C and 3C facilitates a proper adjustment of the intermeshing strength of items 2B and 2C as well as other important properties of the assembly.

In view of Kanemitsu et al., it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. sealing assembly 57 to lips which are sealed to web 14 to hold assembly 57 on web 14 because Kanemitsu et al. teach that the use of lips under a fastener assembly facilitates a proper adjustment of the intermeshing strength of items of the assembly that interlock as well as other important properties of the assembly.

With respect to the limitation of the bag being fail-safe and reduces the risk of release of contents within or from an interior storage volume of the bag by inadvertent separation of one portion of the front wall from another portion of the wall, if the front wall is separated from the back wall at the top of the bag, the bag is still considered fail-safe and still considered to reduce the risk of or release of contents within or from an interior storage volume of the bag by inadvertent separation because the contents will not necessarily leave the bag from the assembly itself.

Claim 26, Bodolay et al. teach that assembly 57 has engaging portions releasably connected to each other and that the portions are engaged upstream from a forming and filling nozzle cylinder of a form, filling, and sealing machine. **Claim 27**, assemblies 57 are secured to continuous elongated web 14 at bag length intervals along web 14. **Claim 28**, sealing of assembly 57 to web 14 is a heat sealing. In the combination of Bodolay et al. with Kanemitsu et al., sealing of the lip thereto will be a heat sealing process since Kanemitsu et al. teach formation by coextrusion which is a heat sealing process. **Claim 29**, although an intended use limitation, Bodolay et al. teach inserting products in the bag.

Prior Art of Record

18. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure: **(a)** McMahon et al. (US 4,909,017) teach attaching paired fasteners to a web in a vertical fill-and-seal machine and **(b)** Yeager (US 5,461,845) teach supplying a web having thereon paired of fasteners.

Response Section

19. The substitute specification and preliminary amendment have been entered.

Conclusion

20. Any inquiry concerning this communication or earlier communications should be directed to Examiner Linda L. Gray at (703)308-1093, Monday-Friday from 8:00 am to 4:30 pm. The necessary fax numbers are (703)305-7718 (official faxes), (703)305-7115 (unofficial faxes), and (703)305-3599 (faxes after final Office action).

llg
February 14, 2000

Linda L. Gray
Linda L. Gray
Patent Examiner
Art Unit 1734